85-417

No. .....

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

EXOTIC COINS, INC., a Colorado Corporation, d/b/a WESTMINSTER COIN & JEWELRY, LTD.; JEFF ANDERSON d/b/a WESTMINSTER GOLD AND SILVER EXCHANGE; JOHN BIELASKI, d/b/a GOLD DUST COIN CENTER,

Appellants,

vs.

PAUL Q. BEACOM in his official capacity as District Attorney for the County of Adams; BERT JOHNSON in his official capacity as Sheriff for the County of Adams; THE CITY OF FEDERAL HEIGHTS, an Incorporated Municipality; LESTER M. BAUER in his official capacity as Mayor for the City of Federal Heights; DOUG FARRIS in his official capacity as Chief of Police for the City of Federal Heights; THE CITY OF WESTMINSTER, an Incorporated Municipality; VI JUNE in her official capacity as Mayor for the City of Westminster; KENNETH HUCK in his official capacity as Chief of Police for the City of Westminster; J. D. MacFARLANE in his official capacity as Attorney General for the State of Colorado,

Appellees.

JAY DAVID MELTZER,

Appellant,

vs.

STATE OF COLORADO,

Appellee.

APPELLEE'S MOTION TO DISMISS APPEAL PURSUANT TO UNITED STATES SUPREME COURT RULE 16.1(b)

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QUESTIONS PRESENTED

I. Does *Colo.Rev.Stat.* §18-16-101, *et. seq.,* which regulates gold and silver coins as commodities and not as currency, regulate an area pre-empted by Congress.

II. Because *Colo.Rev.Stat.* §18-16-101, *et. seq.,* furthers a legitimate local interest and affects interstate commerce only incidentally, does that statute violate the Commerce Clause.

III. If *Colo.Rev.Stat.* §18-16-101, *et. seq.,* authorizes narrow administrative inspections, similar to others previously approved by this Court, does that law permit unconstitutional warrantless searches and seizures.

IV. Are certain terms used in *Colo.Rev.Stat.* §18-16-101, *et. seq.,* which are defined in language easily understood by a reasonable man, unconstitutionally vague.

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APPELLEE'S MOTION TO DISMISS APPEAL PURSUANT TO UNITED STATES SUPREME COURT RULE 16.1(b)

OPINION BELOW

The opinion of the Colorado Supreme Court has been attached, as Appendix A, to the appeal filed by the appellants in this case.

JURISDICTION

In its decision in *Exotic Coins, Inc. v. Beacom,* 699 P. 2d 930 (Colo. 1985), the Colorado Supreme Court relied upon this Court's opinions. It did not depart from the direction that this Court has conceived, nor did it misapply any principles to which this Court has adhered. Because the Colorado Supreme Court's opinion is founded in well-established law, this appeal does not present any substantial federal question that merits this Court's review. Therefore, this Court should dismiss this appeal pursuant to United States Supreme Court Rule 16.1(b).

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STATEMENT OF THE CASE

In 1981, the Colorado Legislature passed the Valuable Articles Bill, *Colo.Rev.Stat.* § 18-16-101, *et seq.* (hereinafter "the Act"). This law imposes certain obligations upon merchants who purchased and sold statutorily defined "valuable articles." The Act requires them to keep certain records which must be available for inspection by the police. It also reads that the vendors must hold enumerated items for thirty days so that the police can examine them. The purpose of these provisions is to help the government to identify burglars and to return stolen property to its rightful owners.

At least twenty-nine other States have similar laws expressly dealing with secondhand sales of precious metals and jewels. (*See* Appendix "A"). All of these statutes

require merchants to prepare detailed records. Many of these laws require that property be held for a designated time and at least two statutes prescribe that the property be held for thirty days. Almost all of them permit warrantless inspections of records and goods. Each State makes a violation of the law at least a misdemeanor, while at least seven States classify some or all violations as felonies.

A group of businessmen who bought and sold gold and silver coins, as well as other items, alleged that the Act was unconstitutional. Relying upon several arguments, they asked an Adams County District Court to enjoin local police and prosecutors from enforcing the Act. After hearing from witnesses at three different hearings, the District Court denied the coin dealers' request and declined to issue any injunctions. The dealers appealed to the Colorado Supreme Court. The District Court's decision was affirmed in *Exotic Coins, Inc. v. Beacom*, 699 P.2d 930 (Colo. 1985).

At the District Court hearings, the merchants presented the testimony of persons whose businesses partially involved the purchase and sale of coins. These people stated that coins could be valued in two ways that were essentially unrelated to their official worth as legal tender. First, a dealer might buy or sell a coin for its numismatic value. Because certain coins are rare, they are worth more to collectors than their face value. Second, the precious metal, like gold or silver, in a coin could be worth more than the coin's official value. The price for precious metals is determined in national and international markets where these metals are bought and sold by investors at fluctuating prices.

While each of these vendors alleged that the Act was difficult to comprehend, they all seemed to understand major portions of it. Although these people stated that this law had adversely affected their businesses, they conceded that the fluctuation in the precious metals markets, which was unrelated to the Act, could increase or decrease their profits.

The law enforcement authorities offered the testimony of two groups of witnesses. The first group included two merchants who dealt with valuable articles. Both of these persons agreed that the Act was not difficult to understand. These vendors also said that the Act's requirements did not, by themselves, reduce their profits.

The second group was comprised of police officers who were responsible for enforcing the Act in the following Colorado cities: Denver; Colorado Springs; Aurora; Westminister; and Northglenn. These policemen testified about several different issues that the coin dealers had raised. First, some of them said that many merchants who bought and sold valuable articles did not appear to have difficulty understanding the Act.

Second, some of these witnesses stated that the Act's holding period and reporting obligations helped the police to discover stolen objects, sold to dealers, which would otherwise have been resold or destroyed. Before the Act was passed, some dealers would melt down certain items or quickly resell them. Without the records required by the Act, or the opportunity for inspection afforded by the holding period, the police would frequently be unable to find stolen property and return it to its owners.

Third, the policemen uniformly agreed that the Act was responsible for a reduction in the number of burglar-

ies in their jurisdictions, as well as for an increase in the level of recovery of stolen valuable articles. Some of the officers testified about particular cases in which stolen property was returned to its owners only because of the Act's reporting requirements and holding period. Others said that, since the Act had gone into effect, their statistics showed a marked, dramatic decrease in the number of burglaries and thefts of valuable articles in their cities.

REASONS FOR DISMISSING THE APPEAL

I

THE ACT DOES NOT INVADE AN AREA PREVIOUSLY PRE-EMPTED BY CONGRESS.

In *Michigan Canners and Freezers Association, Inc. v. Agriculture Marketing and Bargaining Board,* 81 L.ed. 2d 399 (1984), this Court discussed the issue of whether a state statute was pre-empted by a federal law. Justice Brennan summarized the general principles that apply to such an analysis at 406:

> Federal law may pre-empt state law in any of three ways. First, in enacting the federal law, Congress may explicitly define the extent to which it intends to pre-empt state law. . . . Second, even in the absence of express pre-emptive language, Congress may indicate an intent to occupy an entire field of regulation, in which case the States must leave all regulatory activity in that area to the Federal Government. . . . Finally, if Congress has not displaced state regulation entirely, it may nonetheless pre-empt state law to the extent that the state law actually conflicts with federal law. Such a conflict arises when compliance with both

> state and federal laws is impossible . . . or when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [Citations omitted]

In the case at bar, the coin dealers assert that the Act intrudes into an area that has been previously occupied by Congress: the regulation of gold and silver coins as legal tender. However, when the Act is viewed in light of its actual purposes and effect, it is obvious that this argument is flawed. Clearly, only Congress can regulate money. However, the Act does not regulate the flow of coins as a legislatively mandated medium of exchange. Instead, it governs the transfer of coins as commodities.

The distinction between a precious metal as currency and as a commodity has been firmly established. In 1933, Congress passed 31 U.S.C.A. §463, a statute which prohibited persons from requiring that contracts be satisfied in gold rather than in currency. This Court interpreted that legislation in *Norman v. Baltimore and Ohio Railroad Co.*, 294 U.S. 240 (1935). In upholding that law, the *Norman* Court traced the history of the "money clause," *U.S. CONST.* art. I, §8, cl. 5. After recognizing that there was a difference between gold used as a commodity and gold used as currency, Chief Justice Hughes wrote at 304:

> [T]here attach to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. . . . Those limitations arise from the fact that the law "gives to such coinage *a value which does not attach as a mere consequence of intrinsic value.*" Their quality as legal tender is attributed by law, *aside from their bullion value.* [Citations omitted; emphasis supplied.]

Two years later, in *Holyoke Water Power Co. v. American Writing Paper Co., Inc.*, 300 U.S. 324 (1937), this Court reaffirmed that gold could be viewed in two different ways: as a commodity or as currency.

In evaluating the scope of 31 U.S.C.A. §463, the Eighth Circuit Court of Appeals discussed the federal government's power to regulate gold as currency. In *Emery Bird Thayer Dry Goods Co. v. Williams,* 107 F.2d 965 (C.A.8 1939), that court held at 971:

> The exclusive . . . power of Congress over money is the power to legislate wherever the welfare of the people is served by regulation of their medium of exchange. This power extends to certain bullions which are used as money metals *insofar as is proper to control the effects of such bullion upon money.* [Citation omitted; emphasis supplied.]

Before 1973, the Federal Government strictly regulated the ownership of gold. In that year, Congress repealed those restrictions and thus permitted Americans to own and to trade gold as an investment, rather than as currency. *See* 31 U.S.C.A. §§442 and 443 (repealed) and Public Law 93-373, §2, 88 Stat. 445 (1974). The interaction between 31 U.S.C.A. §463 and the repealed statutes was explained in *Feldman v. Great Northern Railway Co.,* 428 F.Supp. 979 (D.C.N.Y. 1977). That Court reconciled the existing law with the repealed ones, basing its reasoning on the fact that gold or silver can be treated as either a commodity or as currency Other courts have also recognized this dichotomy. *In Re Midas Coin Co.,* 264 F.Supp. 193 (D.C.Mo. 1967), *aff. sub nom., Zuke v. St. Johns Community Bank,* 387 F.2d 118 (C.A. 8 1968); *Equitable Life Assurance Society v. Grosvenor,* 426 F.Supp. 67 (D.C.Tenn. 1976); *Henderson v. Mann Theatres Corp.,* 65 Cal.App.

3d 397, 135 Cal.Rptr. 266 (1976); *Scotchman's Coin Shop, Inc. v. Administrative Hearing Commission,* 654 S.W.2d 873 (Mo.1983); *Losana Corp. v. Porterfield,* 14 Ohio St.2d 42, 236 N.E.2d 535 (1968); *Thorne and Wilson, Inc. v. Utah State Tax Commission,* 681 P.2d 1237 (Utah 1984). *See also*: *Gallaher v. City of Huntington,* 759 F.2d 1155 (C.A. 4 1985); *Southern Capital Corp. v. Southern Pacific Co.,* 568 F.2d 590 (C.A. 8 1978); *Jenson v. Continental Financial Corp.,* 404 F.Supp. 792 (D.C.Minn. 1975); *Michigan National Bank v. Department of Treasury,* 127 Mich. App. 663, 399 N.W.2d 515 (1983).

Congress has also recognized this distinction. In 1983, the following language was added to 31 U.S.C.A. §5132:

> The Secretary [of the Treasury] shall annually sell to the public, directly and by mail, sets of uncirculated and proof coins, and shall solicit such sales through the use of the customer list of the Bureau of the Mint.

See also 31 U.S.C.A. §5112(f).

Contrary to the dealers' argument, the Act does not prevent anyone from owning gold or silver. The parts of the Act that the dealers find objectionable (the reporting requirements and the holding period) do not prevent a person from buying or from selling gold and silver commodities. Instead, these two requirements merely delay the date of the buyer's acquisition. An item can be sold even though that object must be kept at the seller's business for a while. *Gallaher v. City of Huntington, supra.* When viewed in light of the Act's important public policy, this delay has only minimal effect on the ownership of precious metals.

A similar challenge to a similar law was rejected in *Joe Flynn Rare Coins, Inc. v. Stephan,* 526 F.Supp. 1275 (D.C.Kan. 1981). In that case, the federal district court found that the Kansas statute did not interfere with a person's opportunity to own gold. The court wrote at 1279:

> The Act does not prohibit the holding, selling or otherwise dealing with gold. The Act merely regulates those persons or entities which engage in the sale of precious metals, of which one is gold. Further, there is no indication the Congress has pre-empted the field of regulating the sale [sic] of precious metals dealers. While the legislative history of Public Law 93-373 [the statute that authorized private ownership of gold] is sketchy, it is clear that the right to private gold ownership was not passed as a major statement of congressional policy in the field. [Footnote omitted].

As the Colorado Supreme Court recognized, there is no indication that Congress wished to create an unrestricted right to possess gold. Instead, it enacted a law that dissolved any *existing* prohibitions against the ownership and sale of gold. That pronouncement, Public Law 93-373, §2, 88 Stat. 445 (1974), did not read that the sales of gold could not be subject to certain restrictions. In other words, while Public Law 93-373 indicates that the ownership of gold cannot be outlawed, there is no indication that Congress did not want transactions involving gold to be regulated by future state or federal legislation. In fact, Congress itself has since provided some limits on gold exchanges in 7 U.S.C.A. §23.

This analysis shows that none of the three possible modes of pre-emption listed in *Michigan Canners* applies to the Act. *See Gallaher v. City of Huntington, supra,* (West Virginia law concerning sales of precious metals

not pre-empted by federal law). Congress has not passed any legislation that expressly bars the States from regulating the sale of coins as commodities. There is no indication that Congress has indicated any intent to occupy the entire field of such regulation. The coin dealers have not shown that there is any situation in which compliance with both federal and state law is impossible or that the Act works as an impediment to the full realization of any congressional purpose. Therefore, contrary to the merchants' position, the Act operates in an area that is not affected by federal law.

II

BECAUSE THE ACT FURTHERS AN IMPORTANT PUBLIC INTEREST AND AFFECTS INTERSTATE COMMERCE ONLY INCIDENTALLY, IT DOES NOT VIOLATE THE COMMERCE CLAUSE.

The Commerce Clause, *U.S.CONST.* art. I, § 8, cl. 3, grants Congress the authority to control commerce between the States. However, if Congress has not acted to regulate a particular enterprise, a State is free to manage its regional components. *Cooley v. Board of Wardens,* 53 U.S. 299 (1851). In *Huron Portland Cement Co. v. Detroit,* 362 U.S. 440 (1960), this Court held that States can enact laws affecting local concerns even if those laws incidentally affect national commerce. A court's analysis in this area must be performed on a case-by-case basis in order not to interfere with legitimate state interests. *Colorado Anti-Discrimination Commisison v. Continental Airlines,* 372 U.S. 714 (1963). The test for whether a statute impermissibly burdens interstate commerce is con-

tained in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) at 142:

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the local putative benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. [citation omitted.]

The Act has several internal mechanisms that limit its effect on interstate commerce. First, it only purports to regulate transactions that occur in Colorado. Second, the holding period does not apply to "stamped and assayed gold and silver bullion and gold coins." *Colo.Rev. Stat.* § 18-16-106(2). Third, it does not affect certain transactions that occur "exclusively in interstate commerce." *Colo.Rev.Stat.* § 18-16-109. Fourth, the Act is not aimed at private collectors. *Colo.Rev.Stat.* § 18-16-102(5) and § 18-16-109.

The Act also promotes a strong state interest. In the case at bar, the government presented extensive evidence. The state initially pointed out that the Act was designed to help the police to solve thefts and burglaries and to help the authorities to return stolen goods to their lawful owners. *See Colo.Rev.Stat.* § 18-16-101. Then, some of the government's witnesses explained how the Act's reporting provisions and holding obligations helped them to achieve those legitimate regional goals. Those people discussed specific cases in which they felt that they would not have

been able to arrest a suspect or rescue stolen property without the Act's requirements. Then, they presented statistics which, in their opinions, showed that the Act had helped to reduce the level of thefts and burglaries of valuable articles and to increase the amount of stolen property that was regained.

In their brief, the coin dealers rely heavily upon *Mid-Fla. Coin Exchange, Inc. v. Griffin,* 526 F.Supp. 1006 (D.C.Fla. 1981). In that case, a federal district court held that a Florida law, which was similar to the Act, would directly burden interstate commerce because its fifteen day holding requirement would restrict the out-of-state transfer of precious metals. However, the *Mid-Fla.* court, apparently ruling only on the pleadings, did not discuss whether any local benefits outweighed any alleged effect on interstate commerce.

When this same issue, involving a Dade County ordinance, was litigated before the Florida Court of Appeals, that court found that a fifteen day holding period did not unduly burden interstate commerce. *Jones v. Gray and Sons,* 430 So.2d 8 (Fla.App. 1983). Aided by testimony that was similar to the evidence presented by the government in this case, the Florida appellate court found that the local benefits outweighed any incidental effect on interstate commerce that the holding period might have. That court wrote at 12-13:

> [T]he record before us contains no evidence to establish that interstate trade in second-hand precious metals was made impossible or impractical by the holding period, that the holding period rendered the appellees unable to sell merchandise after the period expired, or that the price of metals fluctuates wildly

> and rapidly on a day-to-day or even a week-to-week basis. Mere evidence that there is considerable interstate trading and dealing in precious metals, combined with the mere assertion that precious metals prices fall, sometimes mercurially, does not make the burden imposed on interstate commerce clearly excessive in relation to the putative local benefits of the ordinance. In a word, *the trial court's determination that the appellees would suffer an undue economic burden and that the burden on interstate commerce would be excessive is unsupported by the evidence and is pure speculation.* [Footnote omitted; emphasis supplied.]

Accord: Joe Flynn Rare Coins, Inc. v. Stephan, 526 F. Supp. 1275 (D.C.Kan. 1981).

The coin dealers in this case did not show that the Act's holding period prevented them from selling valuable articles. They did not demonstrate that the holding period made interstate trade impossible or even difficult. They did not prove that the prices established in the metals markets always oscillated capriciously and suddenly. Like the merchants who attacked the ordinance discussed in *Jones v. Gray and Sons, supra,* their suggestion that the Act would unduly burden interstate commerce was sheer speculation.

When all of these factors are considered together, it is clear that the Act does not unduly burden interstate commerce. Because it furthers important local concerns, any incidental effects on interstate commerce are outweighed by those regional benefits.

III

THE ACT DOES NOT AUTHORIZE UNREASONABLE SEARCHES AND SEIZURES.

Contrary to the coin dealers' implication, a search of a business does not automatically require a warrant.

At least three United States Supreme Court cases have indicated that, in the proper situation, police officers may examine a business or its records without one.

Camara v. Municipal Court, 387 U.S. 523 (1967) and *See v. City of Seattle,* 387 U.S. 541 (1967), involved warrantless inspections, of a business and a home respectively, which were designed to determine whether those buildings contained violations of municipal safety codes. While this Court held that the inspectors should have obtained warrants in both cases, in *See* this Court suggested that certain regulatory schemes could justify warrantless inspections. *Colonnade Catering Corp. v. United States,* 397 U.S. 72 (1970), concerned one such exception.

In *Colonnade,* this Court examined the constitutionality of a statute that permitted federal agents to inspect retail liquor stores without a warrant. The Court recognized that certain industries have been historically regulated and this history of regulation would put a businessman on notice of potential warrantless inspections. However, the Court also observed that a statute authorizing warrantless inspections must be examined in light of its purpose in order to determine if those inspections were reasonable.

The statute in *Colonnade* permitted a liquor inspector to enter a store in order to examine records or products. If an owner denied an inspector entry, then the owner could be charged with a crime. The issue before the *Colonnade* Court was, therefore, whether a fine could be imposed because an owner denied entry to an inspector who did not have a warrant. This Court held that the statutory scheme did not authorize warrantless forcible en-

tries, but, instead, made the store owner's refusal to permit a warrantless entry a crime. The Court then approved this classification.

In *United States v. Biswell,* 406 U.S. 311 (1972), this Court upheld a law that permitted warrantless inspections of a gun dealer's records and inventory during business hours. Relying upon *Colonnade,* the Court recognized that the search had not involved unauthorized force. Not only did the Court examine the historical background of the firearms industry, but it emphasized that the purpose of the inspection law was an important one. The majority wrote at 315-316:

> Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels in a traceable manner and makes possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms.

The Court stressed that, for inspection to be an effective deterrent, it had to be frequent, and, perhaps, unannounced. The majority added at 316:

> If the necessary flexibility as to time, scope and frequency is to be preserved, the protections afforded by a warrant would be negligible.

Therefore, the threat to legitimate privacy interests was small while the public interests served by the warrantless inspections were large. Since the gun dealers were informed of their statutory obligations and the likelihood of warrantless inspections, this Court found that they had assumed a negligible burden of doing business in a regulated area.

More recently, in *Donovan v. Dewey,* 452 U.S. 594 (1981), this Court upheld federal legislation that permitted warrantless inspections of mines. The Court again focused on the public policy served by the regulatory scheme, stating that, while a history of regulation is an important factor to consider, it is not the determinative one. New industries, too, can be subjected to warrantless inspections.

Finding the legislative purpose to be important, the *Donovan* Court then distinguished *Marshall v. Barlow's, Inc.,* 436 U.S. 307 (1978). In *Marshall,* the Court struck down a statute that permitted a warrantless search that was far broader than the purpose that the law sought to serve. The *Donovan* Court distinguished the warrantless search in that case from the search in *Marshall,* finding that the search in *Donovan* did not violate the Fourth Amendment because its scope was limited to the governmental safety interests that prompted it. In *Marshall,* the inspector had "unbridled" discretion in his search. In *Donovan,* that discretion was adequately limited.

The above cases indicate that the Act's warrantless inspection provisions are constitutionally valid for at least four reasons. First, the Act is based upon at least two important public policies: to return stolen goods to the rightful owners, and to apprehend burglars and thieves. While gold, silver, precious metals and jewels may not have been regulated historically in this context, *Donovan* makes it clear that such a history is not a prerequisite for reasonable warrantless searches. (However, pawnbroking, a similar and perhaps intersecting industry, has been regulated in a like manner for many years. *See Colo. Rev.Stat.* § 12-56-101, *et seq.*) These policies are similar

to those that the Court analyzed in *Biswell:* important social and law enforcement concerns.

Second, under the Act, as in *Biswell,* inspection is integral to the effective recovery of stolen items. To bar inspection would be to prevent the police from discovering both criminals and stolen goods. While the coin dealers clearly wish to exempt themselves from the Act, their businesses represent a crucial link in the chain that permits a burglar or thief to convert stolen property to money. As *Biswell* suggests, the purposes behind the Act and the nature of the businesses to be regulated indicate that a warrant would only provide negligible protection of a merchant's privacy interests.

Third, the Act does not authorize forcible entry. Instead, it penalizes a merchant for refusing to permit an officer to enter and to inspect certain items. This structure was approved in *Colonnade, Biswell* and *Donovan.* The Act does not differ from the requirements established by those three cases.

Fourth, the scope of the warrantless inspection is carefully tailored to the purposes behind the Act. Unlike in *Marshall,* the Act only permits police to inspect a seller's records and certain clearly defined items. In addition, those items can only be inspected within thirty days of their purchase. These inspections are not the fishing expedition condemned in *Marshall.* Instead, they meet the requirements established by *Donovan,* "bridling" a policeman's discretion.

The Fourth Circuit Court of Appeals applied substantial parts of this analysis to a West Virginia law that is similar to the Act. *Gallaher v. City of Huntington,*

759 F.2d 1155 (C.A. 4 1985). In that case, the Court of Appeals, relying on *Donovan,* firmly rejected the argument that warrantless searches could not be authorized because the sale of precious metals and gems had not previously been regulated. The Fourth Circuit also found that the method established to conduct warrantless searches was reasonable. Finally, the court concluded that the law adequately informed a vendor that his property and records would be subject to periodic examinations for enumerated reasons.

The merchants' reliance on *Marshall, Mid-Fla. Coin Exchange, Inc., v. Griffin,* 526 F.Supp. 1006 (D.C. Fla. 1981) and *Joe Flynn Rare Coins, Inc., v. Stephan,* 526 F.Supp. 1275 (D.C. Kan. 1981), collapses in *Donovan's* analytical light. Contrary to their assertion, a long history of regulation is not a prerequisite to warrantless inspection. The validity of a warrantless inspection can be related to its purpose and to its necessity, and the purpose and the necessity of the Act clearly indicate that it is valid. The scope of the warrantless inspection authorized by the Act is narrowly structured so that it will comply with its purposes. These requirements do not offend the Fourth Amendment because they are reasonable and because the coin dealers, as businessmen, surrendered a portion of their expectation of privacy when they chose to enter a regulated field. For them to argue otherwise is to ignore the day-to-day regulation that is already inherent in their trade.

IV

THE ACT IS NOT UNCONSTITUTIONALLY VAGUE.

In *Cameron v. Johnson,* 390 U.S. 611 (1968), this Court reiterated the test for vagueness: would men of common intelligence guess at the meaning of a law and would they differ as to its application? "Vagueness" is a due process concept. It is based upon the principle that no man is to be held criminally responsible for conduct that he could not reasonably understand to be proscribed. *Colten v. Kentucky,* 407 U.S. 104 (1972). A person should be given notice of what conduct is illegal so that he can conform his activity to the requirements of the law. Otherwise, enforcement of the law can become arbitrary and discriminatory. A law must provide explicit standards for the people who enforce it in order to avoid impermissibly delegating policy-making to police, judges or juries. However, language can never be mathematically certain. A statute is not vague if it is written in words of common understanding. *Grayned v. City of Rockford,* 408 U.S. 104 (1972).

A. The definitions of "valuable articles" and "precious or semi-precious metals or stones" are not vague.

The coin dealers allege that the definitions of "valuable article" and "precious or semi-precious metals or stones" contained in *Colo.Rev.Stat.* § 18-16-102 are vague. *Webster's Seventh New Collegiate Dictionary* (1971), defines "precious" at 668 in pertinent part:

> 1: of great value or high price.
>
> 2: highly esteemed or cherished.

"Semi-precious" is defined at 788:

> Of less commercial value than precious.

See also Board of Commissioners v. Good, 44 N.M. 495, 105 F.2d 470 (1940) (silver as "precious metal"); *Louisville and N.R. Co. v. United States,* 106 F.Supp. 999 (D.C.Ky. 1952) (discussion of "precious metals"). *Compare: Sheftel v. People,* 111 Colo. 349, 141 P.2d 1018 (1943) (definition of "scrap metal").

In passing the Act, the Colorado Legislature recognized that metals and gems have varying values. If a metal or a stone not expressly listed in the Act has a high price, it would fall under the Act. However, in order to meet changing times and changing values of metals or gems, the Act must provide a certain latitude. Once a metal or gem would be customarily regarded to be precious or semi-precious, it would be covered by the Act. This interpretation, like the interpretation of all words, is linked to custom in society at large and in the particular trade in question. A reasonable man in the trade could easily tell the difference between gems and metals that have great value and those that do not. The Act is specific enough to warn reasonable men of what conduct is prohibited, yet flexible enough to encompass those items that may be considered precious by custom in the trade.

B. The definition of "purchaser" is not vague.

The coin dealers assert that the definition of "purchaser" in *Colo.Rev.Stat.* § 18-16-102(5) is vague. The dealers complain that the "five time" purchase limit is unclear in the way that it defines a "purchaser." However, it is obvious that this numerical limit is designed to separate casual collectors from those, like the merchants,

who are in the business of buying and selling gold and silver. As the Colorado Supreme Court recognized, the Act requires that the five items must be purchased within a thirty day period. Because, in Colorado, statutes are presumed to operate prospectively (*See Colo.Rev.Stat.* § 2-4-202), the Colorado court determined that any thirty day period in question must have occurred after the Act became effective. Therefore, the coin dealers' fear that a person could be prosecuted for purchases made many years ago is moot.

CONCLUSION

The merchants have not established that the Colorado Supreme Court's decision presents any substantial federal question that this Court should review. Therefore, pursuant to United States Supreme Court Rule 16.1(b) this Court should dismiss the coin dealers' appeal.

Respectfully submitted,

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APPENDIX A

Arizona, *Ariz.Rev.Stat.* §44-1601, *et seq.* (detailed reporting requirements; ten day holding period; no purchases from minors; violation is a misdemeanor)

California, *Cal.Bus.&Prof.Code,* §21625, *et seq.* (detailed reporting requirements; thirty day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Connecticut, *Conn.Gen.Stat.Ann.,* §21-200, *et seq.* (detailed reporting requirements; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Florida, *Fla.Stat.Ann.,* §812.501, *et seq.* (detailed reporting requirements; warrantless inspections; does not apply to coin dealers; violation is a misdemeanor)

Georgia, *Ga.Code Ann.,* §42-405 (detailed reporting requirements; fifteen day holding period; warrantless inspections; violation is a misdemeanor)

Hawaii, *Haw.Rev.Stat.* §486M-1, *et seq.* (detailed reporting requirements; ten day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Kansas, *Kan.Stat.Ann.* §16-706, *et seq.* (detailed reporting requirements; ten day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Louisiana, *La.Rev.Stat.Ann.,* §37:1861, *et seq.* (detailed reporting requirements; fifteen day holding period; warrantless inspections; violation is a misdemeanor)

Maine, *Me.Rev.Stat.* tit. 14 §456 (detailed reporting requirements; warrantless inspections; violation is a misdemeanor)

Maryland, *Md.Ann.Code* art. 56, §416, *et seq.* (detailed reporting requirements; eighteen day holding period; no purchases from minors; violation is a misdemeanor)

Massachusetts, *Mass.Ann.Laws,* ch. 266, §142A (detailed reporting requirements; warrantless inspections; violation can result in one year's incarceration)

Michigan, *Mich.Stat.Ann.* §19.720(1), *et seq.* (detailed reporting requirements; seven day holding period; warrantless inspections; no purchases from minors; violation can be a felony or a misdemeanor)

Minnesota, *Minn.Stat.Ann.,* §325 F. 731 *et seq.* (detailed reporting requirements; flexible minimum fourteen day holding period; warrantless inspections; no purchases from minors; violation is a felony)

Nebraska, *Neb.Rev.Stat.,* §69-201, *et seq.* (detailed reporting requirements; three day holding period; warrantless inspections; violation is a misdemeanor)

Nevada, *Nev.Rev.Stat.,* §647.100 (detailed reporting requirements; four day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

New Jersey, *N.J.Stat.Ann.,* §51:6A-1, *et seq.* (detailed reporting requirements; two day holding period; warrantless inspections; violation results in a civil penalty)

New Mexico, *N.M.Stat.Ann.,* §57-9-1, *et seq.* (detailed reporting requirements; five day holding period; first violation is a misdemeanor, subsequent violations are felonies)

North Carolina, *N.C.Gen.Stat.,* §66-163, *et seq.* (detailed reporting requirements; five day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Ohio, *Ohio Rev.Code Ann.,* §427.01, *et seq.* (detailed reporting requirements; two day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Oklahoma, *Okla.Stat.Ann.,* tit. 59, §1521, *et seq.* (detailed reporting requirements; ten day holding period; war-

rantless inspections; first violation is a misdemeanor, subsequent violations are felonies)

Pennsylvania, *Pa.Cons.Stat.Ann.* tit. 53, §25251, *et seq.* (detailed reporting requirements; thirty day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Rhode Island, *R.I.Gen.Laws,* §6-11.1-1, *et seq.* (detailed reporting requirements; seven to fifteen day holding period; warrantless inspections; violation is either a misdemeanor or a felony, based upon value of goods)

South Carolina, *S.C.Code,* §40-54-10, *et seq.* (detailed reporting requirements; seven day holding period; warrantless inspections; no purchases from minors; first violation is a misdemeanor, subsequent violations are felonies)

Tennessee, *Tenn.Code Ann.,* §38-606 (detailed reporting requirements; three day holding period; warrantless inspections; violation is a misdemeanor)

Texas, *Tex.Rev.Civ.Stat.Ann.,* art. 9009a (Vernon) (detailed reporting requirements; ten day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Virginia, *Va.Code,* §54-859.15 (detailed reporting requirements; ten day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

Washington, *Wash.Rev.Code Ann.,* §19.060.010, *et seq.* (detailed reporting requirements; fifteen day holding period; warrantless inspections; no purchases from minors; violation is a misdemeanor)

West Virginia, *W.Va.Code,* §61-3-51 (detailed reporting requirements; ten day holding period; warrantless inspections; violation is a felony)

Wisconsin, *Wis.Stat.Ann.,* §134.71 (detailed reporting requirements; flexible minimum holding period; warrantless inspections; violation is a misdemeanor)